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IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

DOROTHY FORTH, et al.,	)	Docket No. 17 C 2246
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
WALGREEN CO., et al.,	)	Chicago, Illinois
	)	December 20, 2018
Defendants.	)	10:58 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS - STATUS  
BEFORE THE HONORABLE SHEILA FINNEGAN, MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiffs: ROBBINS GELLER RUDMAN & DOWD  
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1 APPEARANCES (Continued):

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1           THE CLERK: Case 17 CV 2246, Forth vs. Walgreen, et al  
2 -- Walgreen Co, et al. For status.

3           THE COURT: Good morning.

4           MR. ALPERSTEIN: Good morning, your Honor.

5           MR. GUGLIELMO: Good morning, your Honor.

6           MR. ALPERSTEIN: Jason Alperstein, from Robbins Geller  
7 Rudman & Dowd, on behalf of the plaintiffs.

8           THE COURT: Thank you.

9           MR. GUGLIELMO: Good morning, your Honor, Joseph  
10 Guglielmo with Scott + Scott, also on behalf of the plaintiffs.

11          THE COURT: Thank you.

12          MS. COLEMAN: Good morning, your Honor, Selina Coleman  
13 with Reed Smith on behalf of Walgreen Co.

14          MR. LEIB: And Michael Leib of Reed Smith on behalf of  
15 Walgreen.

16          THE COURT: All right. Thank you.

17                I did have a chance to look at -- and I went through  
18 the docket and I read in its entirety -- your April 2nd, 2018,  
19 joint status report.

20                So, it is for -- that's what you called it, Joint  
21 Proposed Discovery Schedule.

22                So, it looked like Judge Lee entered an overall fact  
23 discovery deadline. And you had some other dates that you were  
24 proposing -- you know, for example, experts and other things.

25                Is that something you want? I mean, it probably does

1 make sense to set the expert discovery schedule. I mean, if  
2 you are in agreement on it, right?

3 MR. ALPERSTEIN: Yeah.

4 I think at this point only a few deadlines we had,  
5 which was the fact discovery cutoff, class certification.

6 So, yeah, we don't have the rest of the schedule, but  
7 that is one of the issues, I think, that has led us here  
8 today.

9 Just because of some of the discovery issues, we were  
10 uncertain whether we would be able to comply with certain  
11 deadlines and whether we would need more time.

12 THE COURT: Oh.

13 MR. ALPERSTEIN: At the last status conference, Judge  
14 Lee extended the deadline to the amendment of the pleadings.

15 THE COURT: All right.

16 MR. ALPERSTEIN: And, so, I think that is one overall  
17 issue that we would like to discuss with your Honor, in light  
18 of the discovery that has taken place today.

19 There are some issues that we identified for Judge Lee  
20 in the last two status conferences.

21 THE COURT: Okay.

22 Is there a -- I saw two transcripts. I didn't have a  
23 chance to read them. Your case came in when it was, like, a  
24 flood of cases. And it has been crazy.

25 (Laughter.)

1 THE COURT: So, I usually would have read those.

2 But, in any event, was the last hearing transcribed;  
3 do you know?

4 MR. ALPERSTEIN: I think it -- I think it -- was.

5 THE COURT: Okay.

6 MR. ALPERSTEIN: I don't know if anyone requested the  
7 --

8 THE COURT: All right. Then that is fine.

9 Why don't you update me on what the issues are.

10 MR. ALPERSTEIN: Sure.

11 So, I guess we can start two status conferences ago,  
12 on August 28th. That is when we advised Judge Lee that we had  
13 a potential issue with the status of defendants' document  
14 production.

15 We had been working together, meeting and conferring  
16 on that; but, just given the pace of it, we were unsure of  
17 whether we would be able to comply with certain deadlines.

18 The primary one that was coming up was the amendment  
19 of the pleadings deadline.

20 And --

21 THE COURT: But that was met, right, or no?

22 MR. ALPERSTEIN: That was --

23 THE COURT: Oh, you mean he gave you leave to amend?

24 MR. ALPERSTEIN: Right.

25 Yes, so that one -- so, this was August. The deadline

1 was in November.

2 THE COURT: Okay.

3 MR. ALPERSTEIN: So, we just kind of let the Court  
4 know that the parties are continuing to, you know, meet and  
5 confer; and, the document production is ongoing; but, that  
6 might be something that would need to be revisited.

7 So, on November 6th was the next status conference and  
8 we advised Judge Lee that since the prior status conference,  
9 there really had been little progress in document production.

10 And since that time, only 9,000 additional documents  
11 had been produced, and 12,000 in total; and, made an oral  
12 (inaudible) motion for extension of the deadline to the  
13 amendment of the pleadings.

14 The Judge recognized that discovery had not been  
15 proceeding as quickly as he would have liked and extended the  
16 deadline to February 28th.

17 During that status conference, I also asked that the  
18 Court would monitor discovery a little bit more closely, to  
19 ensure that we proceeded with discovery, as the Court had  
20 envisioned, and we are able to meet the other deadlines that  
21 had been pending.

22 And that is when the Court referred us to --

23 THE COURT: Thank you.

24 (Laughter.)

25 MR. ALPERSTEIN: -- to your Honor for today's status

1 conference.

2 THE COURT: Okay.

3 MR. ALPERSTEIN: And, I think, you know, there are a  
4 lot of discovery issues that both sides have.

5 From the plaintiffs' perspective, there is one  
6 dominating discovery issue; and, that is, that the discovery --  
7 excuse me, the document production. And --

8 THE COURT: The timing of it as opposed to the receipt  
9 of it?

10 MR. ALPERSTEIN: Well, just the amount -- yeah, the  
11 receipt of production. And that has really impacted a lot of  
12 other aspects of discovery at this point.

13 So, we have -- for example, we have -- noticed  
14 30(b)(6) depositions. We have only been able to take a limited  
15 number of topics because of a lack of document production.

16 We have served subpoenas to third-parties. And it has  
17 hindered our ability to get documents from those third-parties.

18 They are, understandably, telling us to get them from  
19 Walgreen's first before they go ahead and produce those.

20 And it has also precluded us from even really being  
21 able to take or look at what 30(b)(1) depositions that  
22 Walgreens, you know, would like to take.

23 And I have all of details of, you know, where  
24 production has gone through for over the last, you know, few  
25 months. It has kind of been trickling.

1           But the real problem is that we are not sure where  
2 they are with their document production.

3           THE COURT:   Yes.

4           MR. ALPERSTEIN:  We don't have a date for substantial  
5 completion of document production.  That has been something  
6 that we have been asking for.  And because we don't know where  
7 they are in the production and when production will be  
8 completed, we are really kind of in a bind as to, you know, how  
9 we can take the next steps in discovery and whether we will  
10 have sufficient time to complete discovery and be able to take  
11 those depositions and get the documents that really need to  
12 move this case forward.

13           THE COURT:  So, right now, it is not -- you don't have  
14 a dispute about what should be produced, you would just -- you  
15 would like it faster?

16           MR. ALPERSTEIN:  Yeah.

17           THE COURT:  And you would like to know, you know, when  
18 are you going to think you are going to be done, based on the  
19 progress to date.

20           MR. ALPERSTEIN:  Yes.

21           And, so, we certainly want a deadline date for the  
22 substantial completion of discovery.  And we want to understand  
23 where they are in the document production, so we can then  
24 determine whether we can actually go forward with, you know,  
25 more 30(b)(6) depositions or go ahead and notice some other



1 depositions.

2 We do want to take the depositions of these various  
3 third-parties -- the Pharmacy Benefit Managers -- but we are  
4 waiting for documents from Walgreens so we can go ahead and do  
5 that.

6 So, we are just not sure whether what they have  
7 produced is ten percent of what is out there; if it is more  
8 than that; and, I think given the numbers that they have told  
9 us of what is being collected and reviewed, it is -- we are  
10 concerned because we have had a discovery period so far of  
11 about six months.

12 THE COURT: Right.

13 MR. ALPERSTEIN: And it just seems on the pace that we  
14 have had --

15 THE COURT: That is what I was just going to ask, is  
16 when the stay was lifted; and, then, actually discovery went  
17 forward.

18 When was that, again?

19 MR. ALPERSTEIN: That was in May.

20 MS. COLEMAN: May 14th.

21 MR. ALPERSTEIN: Yes.

22 And the first production was June 13th.

23 THE COURT: Okay. All right.

24 MR. LEIB: Your Honor, this is Michael Leib. I just  
25 want to say one thing and, then, I will turn it over to

1 respond.

2 Counsel just represented that the Judge said on the  
3 November 6th date that that discovery is not proceeding as fast  
4 as he would like. I don't recall that comment ever being said  
5 by the Judge.

6 He did agree to extend the deadline for amending the  
7 pleadings --

8 MR. ALPERSTEIN: The date, right.

9 MR. LEIB: -- but I don't ever recall him ever saying  
10 that. And I don't think he would have, because he referred it  
11 to you.

12 There were discovery issues on both sides, that you  
13 will hear. And, so, I just wanted to clarify that issue for  
14 the record.

15 THE COURT: All right.

16 Go ahead.

17 MS. COLEMAN: Yes, your Honor. I would like to  
18 provide a little context.

19 Discovery did launch in May, 2018, after the amendment  
20 of the pleading -- after the last amended pleading.

21 Since that time, Walgreens had collected over 1.15  
22 million documents.

23 There have -- initially, ninety percent of these are  
24 agreed upon. And about 500, or maybe even 2000, documents were  
25 collected after the last status conference.

1           In November, the digital custodians were proposed and  
2     some were agreed to with respect to -- you know, the current  
3     number, we are now up to 23 custodians, that we have agreed to  
4     provide documents for.

5           Currently, we do have 1.5 million documents.

6           As of the last status conference, over 300,000  
7     documents have been reviewed.

8           At this point, over 400,000 documents have been  
9     reviewed. The responsiveness rate, because of the broad search  
10    terms, is very low. So, under five percent of documents have  
11    been responsive.

12          And, so, we have produced over 16,000 documents to  
13    date in eleven separate productions, including what we are  
14    doing using predictive coding prioritized, so that all of the  
15    documents that are most likely to be responsive, including the  
16    documents that we have agreed would most likely facilitate  
17    potential amended pleadings, are getting to them as quickly as  
18    they are identified.

19          So, that has been our top priority, that the documents  
20    we have discussed would most likely be relevant to the  
21    plaintiffs to consider. And, so, we are getting to those  
22    first.

23          THE COURT: Can you -- because I heard five percent  
24    responsiveness and, then, I heard predictive coding. And, so,  
25    how are you using "predictive code," like that?

1 MS. COLEMAN: Basically, it is for prioritization  
2 purposes.

3 THE COURT: Okay.

4 MS. COLEMAN: We had discussed early on clearly to use  
5 it, also, for culling purposes. So, we have something that we  
6 are going to be discussing further with opposing counsel.

7 So, just today, we were circulating some additional  
8 information on that.

9 But, today, it is just the issue to try to get the  
10 most responsive documents to them as fast as possible.

11 But only to provide, also, some context, as far as  
12 what has been happening on the plaintiffs' side, they filed  
13 this lawsuit in May, 2017.

14 There are currently -- it looks like there are going  
15 to be five individual plaintiffs.

16 At this point, we have only received from them 169  
17 documents. We understand that there are four documents from  
18 the searching of the five individuals. There are no documents  
19 for others.

20 And we understood that only recently were any  
21 documents collected from the Funds' clients. We are not aware  
22 of any review that has been done. We haven't received their  
23 productions. We don't have any sense of when the productions  
24 will begin or when they will be complete.

25 We also have no assurances when the individual

1 documents will be complete. We have asked for that before.

2 We would like to be done taking depositions that --  
3 and we will talk about that further -- that we would like to  
4 start those as soon as possible for the individuals. They  
5 shouldn't have that many documents.

6 We don't understand why, when this lawsuit was filed  
7 in May 2017, we were having assurances that we have got a  
8 wealth of documents for the five individuals that are  
9 representatives in the class.

10 So, I think that there is an extreme imbalance here,  
11 where we have already collected over 1.5 million documents.  
12 There are 23 custodians right now.

13 Just yesterday -- or two days ago -- there was a  
14 request to add additional custodians. And, so, at this point,  
15 that is a moving target. They are still collecting.

16 We have been reviewing, since discovery on --

17 THE COURT: How many additional were asked for?

18 MS. COLEMAN: It would depend on the known. And there  
19 were certain individuals, who were working with the Funds'  
20 clients. But as far as the Pharmacy Benefits Managers and,  
21 also, Ms. Ceric, is her name, at Walgreens, and anyone in her  
22 position before or after, who really had been told, maybe a  
23 month ago, that we did not believe would have potential  
24 responsive information.

25 So, we are looking into that. We will get back to

1     them. But it shows that as of this week, there still is  
2     discussion about the number of custodians in this case, that  
3     would make it impossible at this point to say with certainty  
4     that we'll complete production, until that is agreed upon.

5             THE COURT: You mentioned the individual defendants.  
6     What about the non-individual plaintiffs -- the entities that  
7     they have produced or --

8             MS. COLEMAN: They have not.

9             Mr. Alperstein and I talked about that in early  
10    December, I believe, or maybe it was the last day of November.  
11    He indicated that he had identified custodians. We don't yet  
12    know who they are. They haven't yet been identified to us.

13            They were in the process of collecting documents.

14            I asked the volume. He said they did not know yet  
15    what the volume would be or when productions would begin. It  
16    was still in the early stages.

17            And this was late November, 2018, when we began our  
18    collections in May of 2018, and began producing, as indicated,  
19    in June of 2018, a month after discovery began.

20            That is the only document discovery. We don't have --

21            THE COURT: All right.

22            I will let opposing counsel refute your argument.

23            MR. GUGLIELMO: Your Honor, this is Joseph Guglielmo.  
24    I can address these issues.

25            With respect to the individual plaintiffs, we made

1 productions with all of the plaintiffs except for Mrs. Bailey.

2 And the reason --

3 THE COURT: Are you done with the others, then?

4 MR. GUGLIELMO: We are not entirely done, your Honor.

5 We are trying to confirm with the individual plaintiffs whether  
6 they have any addition documents.

7 But the chase is not really that.

8 THE COURT: All right.

9 I mean, I am guessing they don't have many.

10 What is your estimate when you are going to finish  
11 with just the individual plaintiffs?

12 MR. GUGLIELMO: The individual plaintiffs, your Honor,  
13 it is a matter of confirming that we have looked in all of the  
14 areas we need to look.

15 Most of these plaintiffs are elderly. They don't have  
16 e-mails. So, we are just trying to get physical access to  
17 certain documents that they may have in their possession, as  
18 opposed to, like, searching for e-mails.

19 THE COURT: You have done an estimate for how much  
20 time you need?

21 MR. GUGLIELMO: I would say probably in the next  
22 thirty days we can let them know we will produce whatever is  
23 left. And it is really going to be an insignificant production  
24 with respect to the individuals.

25 As to the one plaintiff, Ms. Bailey, her husband

1 passed away this summer. And, so, we asked for, and Walgreens  
2 provided us, an extension to respond to the discovery for her.

3 She has been, sort of, out of contact since her  
4 husband's passing. Obviously, for very good reasons.

5 At this point, we have been trying to discuss with  
6 her, her dismissal from the case. We haven't been able to  
7 communicate with her.

8 So, at this point we think the best, sort of, step in  
9 that process is to just voluntarily dismiss her without  
10 prejudice.

11 If she ever comes back to us or she responds to us,  
12 given the circumstances, obviously, we can, you know,  
13 communicate or confer with Walgreens about having her brought  
14 back in. But we want to preserve her rights because we haven't  
15 been able to communicate with her. That has been the delay, at  
16 least, as to Mrs. Bailey.

17 THE COURT: Has someone actually gone to her house or  
18 anything?

19 MR. GUGLIELMO: We have been trying to communicate  
20 with her, trying to call her.

21 We have had colleagues try to reach out to her at her  
22 house.

23 THE COURT: Okay.

24 MR. GUGLIELMO: And --

25 THE COURT: And maybe you should file the motion.



1 That will be up to Judge Lee.

2 So, it makes sense to me if you can't -- what is going  
3 to happen is, if she is not complying with discovery, she is  
4 going to be out.

5 MR. GUGLIELMO: We circulated a proposed stipulation  
6 of dismissal. I believe Mr. Leib provided some comments while  
7 we were on the way to the hearing.

8 We will take a look and call and speak with them and,  
9 then, get something on file pretty quickly as to her.

10 That should address the individual plaintiffs.

11 As to the third-party payor clients, your Honor, you  
12 know --

13 THE COURT: Are those what we call the two categories?  
14 We have got just individuals and, then --

15 MR. GUGLIELMO: Yes, the two categories.

16 THE COURT: Okay.

17 MR. GUGLIELMO: So, we have three Fund clients,  
18 third-party payor clients. We have collected -- what we did is  
19 we did a self-collection of certain types of low-hanging  
20 documents, like contracts and things like that. Those we have  
21 -- those, essentially --

22 THE COURT: How many are there?

23 MR. GUGLIELMO: In terms of documents?

24 THE COURT: No, third-parties.

25 MR. GUGLIELMO: There are three Fund plaintiffs.

1 THE COURT: Okay.

2 MR. GUGLIELMO: So, we have done two forms of  
3 collection. One is, essentially, gathering up sort of our copy  
4 of low-hanging-through documents.

5 Then we actually retained a vendor to collect  
6 forensically from the three Funds.

7 And in response to Ms. Coleman's statement that we  
8 have not identified who the custodians are, yes, we told them  
9 that the individuals identified in the initial disclosures were  
10 the initial custodians.

11 Since that time, after discussing the discovery  
12 requests with the plaintiffs, we have now identified additional  
13 custodians. We can provide that information to them.

14 Of the custodians that we have now identified, in  
15 addition to those identified in the initial disclosures, those  
16 have been collected.

17 Between the Funds thus far, we have collected  
18 approximately 1.2 million documents. So, this is not an  
19 insignificant thing. And, essentially, what we have done is we  
20 have collected their entire e-mail boxes. We have collected  
21 their -- essentially, their -- shared-driven documents. And we  
22 are running the search terms against that.

23 We had some technical issues which we ran into, your  
24 Honor. Essentially, some of the documents were encrypted  
25 documents.

1           You know, e-mails and documents are encrypted because  
2 they have a highly secured -- most of the Funds have highly  
3 secured -- modes of communication.

4           THE COURT: Okay.

5           MR. GUGLIELMO: So, we had to deal with that issue.

6           The documents are now in our database; terms being run  
7 against them; and, lawyers are going to now review for  
8 relevance responsiveness, to make sure that we have those  
9 documents. You know, essentially, a queue-seeing process.

10           That probably will take about thirty days to do.

11           THE COURT: Oh, that is pretty fast for a million-two  
12 documents.

13           MR. GUGLIELMO: Your Honor, the timing of the  
14 production will depend on technical issues.

15           So, if we run into more technical issues, as we are  
16 processing documents, obviously, we will reach out and let them  
17 now.

18           But we have collected from these clients a significant  
19 amount -- over-collected, I would say -- because we have  
20 collected, for example, for IBW-38, Walter O'Malley, we have  
21 collected his entire e-mails. All right?

22           We have collected all of the documents in his  
23 possession and --

24           THE COURT: So, I mean, basically, you have done all  
25 of the collection. All you have to do is the reviewing. And

1 you are predicting thirty days to finish that?

2 MR. GUGLIELMO: Thirty days, I would say, your Honor,  
3 roughly, given the holidays.

4 THE COURT: Well, assuming longer if --

5 MR. GUGLIELMO: Assuming longer, we are talking it may  
6 be done by the beginning of February, I believe.

7 THE COURT: Okay.

8 MR. GUGLIELMO: But it is not some, you know,  
9 insurmountable thing.

10 Again, if we run into technical issues or we identify  
11 that, for some reason, we are not getting hits or we are  
12 getting too many hits, we have already reached out and told  
13 them that we will confer with them over, sort of, the results  
14 in sets.

15 But that is really where we are with the Fund clients.  
16 And we tried to do this in a way where, gathering up the  
17 documents that are most readily available, we have those.

18 But the eDiscovery process took a few extra steps for  
19 us because we just needed to work with the vendor. We wanted  
20 to make sure we did it forensically.

21 And, then, we also had to deal with issues like the  
22 servers, because their e-mail servers, they don't just have  
23 Outlook -- like, for example, I have Outlook. And I can send  
24 and receive. They do everything through encrypted  
25 communications.

1           So, we needed to deal with getting passwords and other  
2 things, sort of technical hiccups that we had.

3           THE COURT:   Okay.

4           MR. GUGLIELMO:   But that is really where we are with  
5 these plaintiffs.   And we are happy to provide what we have  
6 just said to the Court in a correspondence or communication.

7           One other thing that, I think, Ms. Coleman asked us to  
8 do was supplement our initial disclosures.   We are in the  
9 process of doing that.

10           One of the technical, sort of, issues with that is as  
11 we have gone back in time -- because the case goes back to  
12 2007 -- we are trying to identify the correct individuals for  
13 the initial disclosures.

14           So, our clients dealt with certain either PBMs or they  
15 dealt with an intermediary that sort of dealt by the PBMs.

16           We are trying to be make sure we have those  
17 individuals.   So, we will provide them the additional  
18 information.

19           I would say we can provide it informally by the end of  
20 this week; and, then, we can provide it formally within the  
21 next week or so -- the initial disclosures and supplemental  
22 disclosures.

23           THE COURT:   All right.

24           MR. LEIB:   Your Honor, first of all, on the documents  
25 that they have already collected, last week in our meet and

1 confer they told us they would be producing all of the  
2 plaintiffs' documents at one time.

3 I am not sure I understand that. There should be  
4 rolling productions.

5 THE COURT: But if you are going to have them in sixty  
6 days, does it matter that much?

7 MR. LEIB: It does, your Honor.

8 THE COURT: Okay.

9 MR. LEIB: First of all -- let me take a step back  
10 here.

11 I am a little mystified that they are first now  
12 collecting the Fund documents. We started collecting  
13 immediately in May and producing within week or a month  
14 thereafter -- a week or a month thereafter.

15 They are the plaintiffs. They filed the lawsuit a  
16 year-and-a-half ago. And they have just collected 1.2 million  
17 documents and haven't produced any of them.

18 THE COURT: But why does it -- let's assume that you  
19 are going to have their records in 60 days. Why does it  
20 matter? I mean, you don't have --

21 MR. LEIB: Well, first of all, I would be shocked if  
22 they actually come back in 60 days.

23 THE COURT: I probably would be, too, but we will see.  
24 It sounded fast to me, but what do I know?

25 (Laughter.)

1           MR. LEIB: And, so, I think there is going to end up  
2 being delays.

3           We want to take the plaintiffs' depositions. We want  
4 to take plaintiffs' depositions first.

5           We gave them the right to take limited 30(b)(6) deps  
6 early on certain topics, ahead of the plaintiffs' deps. But,  
7 now, before any other deps go forward, we want to take the  
8 plaintiffs' deps.

9           We can't take the plaintiffs' deps --

10          MR. GUGLIELMO: Your Honor, we have never agreed to  
11 that. There has never been an agreement that we would take  
12 limited depositions, not just 30(b)(1)s. That is just not  
13 true.

14          THE COURT: Well, let me stop.

15          So, some limited 30(b) -- did you say 30(b)(6)  
16 depositions have been taken.

17          MS. COLEMAN: Correct.

18          MR. LEIB: Correct, your Honor.

19          THE COURT: How many were done?

20          MS. COLEMAN: Two individuals were designated on six  
21 topics.

22          Of the original two, we focused on those that were  
23 less document-intensive.

24          THE COURT: Okay.

25          So, are those the only depositions that have been

1 taking place -- that have been done?

2 MR. LEIB: Yes, your Honor.

3 Whether the plaintiffs have agreed to it or not, this  
4 is what the defendants want. And --

5 THE COURT: So, now, you want to depose some  
6 plaintiffs?

7 MR. LEIB: Correct.

8 And we -- and it's pretty typical, your Honor. As you  
9 know, and as the defendants know, for the plaintiffs to go  
10 first.

11 In a class action case, it is almost universal that  
12 you get the plaintiffs' depositions. Then the named plaintiffs, they  
13 should sit for their depositions.

14 We can't -- we initially wanted to do that in January.  
15 They said they would be able to complete document production  
16 in time for us to take them in mid-to-late February.

17 We said, "Okay."

18 But, now, from what it looks like, I don't know how  
19 many of the 1.2 million we will get.

20 If -- let's take the individuals for a second.

21 Now, the individuals, they are saying it is going to  
22 take them thirty days to confirm whether five individuals have  
23 produced all of their documents.

24 That seems like a long time. We would prefer it --  
25 and have asked them to confirm -- at least substantial



1 completion by the middle of January, so that we can start  
2 preparing to take those depositions in mid-February.

3 Then --

4 THE COURT: Is there any objection?

5 I mean, why can't you schedule -- pick dates now for  
6 the individual plaintiffs? Because we know their production is  
7 going to be done.

8 MR. ALPERSTEIN: Your Honor, they only noticed -- they  
9 only notified us on December 7th they want to start taking  
10 these depositions. It is not like they have been waiting  
11 forever.

12 THE COURT: But --

13 MR. ALPERSTEIN: And in response to Mr. Leib's comment  
14 that he is mystified, we proposed search terms. It took a  
15 while for us to negotiate the search terms that we were going  
16 to run. So, why would we run unilateral search terms against  
17 production? That didn't happen until September.

18 THE COURT: I mean, I don't want to spend too much  
19 time talking about the past and who did what.

20 MR. ALPERSTEIN: Understood.

21 THE COURT: You know?

22 So, here we are.

23 MR. ALPERSTEIN: Yes.

24 THE COURT: And it is fantastic that, at least for the  
25 individual plaintiffs, you already got the material. You are

1 going to confirm you have everything and it is going to be  
2 done.

3 And, so, I hear what defendants say, they want to  
4 depose plaintiffs.

5 MR. ALPERSTEIN: We really want to depose their  
6 witnesses, too. And we have been waiting for a very long time  
7 and --

8 THE COURT: That is fine.

9 MR. ALPERSTEIN: -- I don't understand what the  
10 prioritization is.

11 THE COURT: Hold on, counsel.

12 MR. ALPERSTEIN: Sorry. I apologize.

13 THE COURT: We can't -- I get to interrupt you. You  
14 don't get to interrupt me. You know how the rules work.

15 So, you know, if you are telling me that your position  
16 is plaintiffs should not be deposed until your defense -- I  
17 mean, you get to depose defendants' witnesses -- you know, you  
18 can make that argument.

19 But if the defendants want to depose the individual  
20 plaintiffs, they can do it. They don't have many documents.  
21 So, it may make sense for them to do that.

22 You certainly can't say, "You cannot -- " I don't  
23 think -- "Judge, you should not allow any individual plaintiff  
24 to be deposed until every defense document is produced and we  
25 get to depose defendants." All right?

1           So, plaintiffs don't need the defense documents in  
2 order to answer questions, I wouldn't think -- your individual  
3 plaintiffs.

4           MR. ALPERSTEIN: No, your Honor. And we are not  
5 saying that, either.

6           THE COURT: All right.

7           MR. ALPERSTEIN: I am not saying that.

8           THE COURT: So, are you objecting to them deposing --  
9 we are going to talk about the discovery you want and we are  
10 going to get information and we are going to get a little bit  
11 more.

12           But is there any reason we can't move ahead with the  
13 individual plaintiffs' depositions, you know, soon, and get  
14 those on the schedule?

15           MR. ALPERSTEIN: We have been trying to --

16           THE COURT: Is the answer "Yes" or "No"?

17           MR. ALPERSTEIN: The answer is "Yes," we can --

18           THE COURT: Okay.

19           MR. ALPERSTEIN: -- get them scheduled --

20           THE COURT: Okay.

21           MR. ALPERSTEIN: -- based on the individuals' and  
22 counsels' schedules.

23           THE COURT: Okay.

24           So, you are going to talk about that. I am going to  
25 have one thing done.

1           And a joint status report is to block out dates, talk  
2 with each other and talk with the individual plaintiffs, so  
3 those can be scheduled.

4           So, again, I don't really want to talk about who is at  
5 fault for the past. I want to talk about next steps and what  
6 is going to happen next.

7           So, in terms of the production from Walgreens, what  
8 is -- I mean, I get you are getting more custodians and things  
9 are evolving; but, based on the collection you have now -- if  
10 that was all you had to produce -- and based on your progress,  
11 do you have some idea of when you are going to be able to  
12 produce?

13           MR. LEIB: What we are starting to do, your Honor, now  
14 is -- and we just sent them a predictive coding protocol -- it  
15 depends on how many documents we end up needing to review.

16           What we have -- and we are continuing to do rolling  
17 productions.

18           What we have told them is, "Let's get the plaintiffs'  
19 deps set and let's confer, again, towards the end of January,  
20 when we will have gone through the predictive coding, and gone  
21 through and gotten a sense by that time, hopefully, how many  
22 more documents we will need to review."

23           At that point, we will -- well, hopefully, we will  
24 have finalized the custodians.

25           One of the issues on the custodians was --

1           THE COURT: Let me -- I mean, I just want to be, you  
2 know, concrete.

3           So, you told me you have a collection so far of 1.15  
4 million and --

5           MS. COLEMAN: And, sorry, just to clarify, the 1.5  
6 million was hit -- that was on the search terms. So, that is a  
7 broader number for that stuff --

8           THE COURT: All right.

9           MS. COLEMAN: -- for the collection review.

10          THE COURT: So, when you are talking about now, of  
11 trying to narrow that to what you are going to review --

12          MR. LEIB: Correct.

13          THE COURT: -- and are you -- and that process is  
14 ongoing right now.

15          MR. LEIB: Well, the predictive coding -- we are still  
16 reviewing documents. Every day we are reviewing documents.  
17 But what we want now, is we want to put in place the predictive  
18 coding --

19          THE COURT: To try and narrow.

20          MR. LEIB: -- to try and narrow.

21          So, I mean, the search terms were extremely broad.

22          THE COURT: So, based on the reviews you have done  
23 just using search terms, you have done a rolling production and  
24 you are finding a five percent response rate.

25          MR. LEIB: Right.

1 THE COURT: And, based on how long it took you to  
2 review 400,000 --

3 MR. LEIB: And it will take many more months. I mean,  
4 we are just applying the predictive coding.

5 THE COURT: Okay.

6 MR. LEIB: So, if you want to apply the predictive  
7 coding and try and -- you know, as we go through that, the  
8 extensive -- you know, as we go through them, on the predictive  
9 coding, it depends how less and less relevant the documents  
10 start to become, you can start to get a sense of when you might  
11 be able to complete the production.

12 Monday of this week -- or was it yesterday; I think it  
13 was yesterday -- we got some information from them, that we  
14 have been asking for, for a very long time, that will now allow  
15 us to respond to them on whether there are additional  
16 custodians.

17 We have been asking for this for months and we finally  
18 got it yesterday.

19 So, we should be able to, based on the information  
20 now -- hopefully, be able to -- finalize the number of the  
21 documents.

22 The information that they provided to us was --

23 THE COURT: When you say the finalize the number of  
24 documents --

25 MR. LEIB: I am sorry, the number of custodians.

1 THE COURT: Oh.

2 MR. LEIB: The information that they provided  
3 yesterday wasn't fully complete. They still have to complete  
4 that information.

5 Hopefully, they can tell us today when they will be  
6 able to give us the completion of the documents -- that  
7 information -- but we need that information to finalize the  
8 number of custodians. We can't do that until we have that  
9 information finalized.

10 So, it is a constantly moving target, unfortunately,  
11 with the plaintiffs, who haven't done what they need to do, to  
12 give us the information that would allow us to -- as an  
13 example, on this one person.

14 THE COURT: You know, let me stop.

15 So, let me hear from plaintiffs just on the -- are you  
16 in agreement on the predictive coding? It does seem to make  
17 sense.

18 If they have a five percent response rate, after  
19 reviewing 400,000 documents, I mean, something has to be  
20 modified.

21 MR. ALPERSTEIN: So, we were just told about the five  
22 percent today.

23 We haven't had any substantive conversation about  
24 predictive coding. The ESI protocol requires them to work with  
25 us in order to do that.

1           Certainly, by sending us an e-mail this morning of  
2   what they plan to do -- I am not saying this is what we  
3   proposed, this is what we are going to do -- it is certainly  
4   not, you know, compliant with the ESI protocol.

5           But I just -- we just -- don't see a showing at this  
6   point that predictive coding is necessary because it appears  
7   that there has just been a delay in getting us the documents.

8           You know, obviously, predictive coding is used in many  
9   cases. I am not sure the amount of documents in this case  
10   requires it. But usually that happens on the front end of the  
11   case.

12           Here, it seems that we have been trickling production  
13   over the last six months.

14           Now, six months in, they decide, "Oh, we want to go  
15   ahead and do predictive coding."

16           So, we, obviously --

17           THE COURT: So, you --

18           MR. ALPERSTEIN: -- have a concern about that.

19           THE COURT: -- would be fine, if it takes longer, you  
20   know, if you only get five percent responsive records, you are  
21   fine with the manual process instead of trying to do predictive  
22   coding --

23           MR. ALPERSTEIN: Yes.

24           THE COURT: -- which actually might make a lot of  
25   sense.



1           But that is your position, to, "Let's just keep with  
2 the manual process"?

3           MR. ALPERSTEIN: Yes.

4           THE COURT: No predictive coding.

5           And, you know, obviously, it takes longer and, you  
6 know, we will deal with that.

7           MR. ALPERSTEIN: So, typically, if I would -- when I  
8 hear something, like, a five percent hit rate, that would then  
9 force a meet and confer and we would further discuss search  
10 terms and figure out maybe we have the wrong type of search  
11 terms.

12          THE COURT: It is a very long process.

13          MR. ALPERSTEIN: Yes.

14          So, we just --

15          THE COURT: There is the (inaudible) process.

16          MR. ALPERSTEIN: Yes.

17          THE COURT: And, then, we run samples. And, then, we  
18 try it, again.

19          MR. ALPERSTEIN: Right.

20          THE COURT: And, you know, let's just push this whole  
21 deadline back a year at this point.

22          MR. ALPERSTEIN: So --

23          THE COURT: Really, it is going to be, you know --

24          MR. ALPERSTEIN: Well, I just don't want to be in a  
25 position, Judge, now --

1 THE COURT: Do you do predictive coding, because --

2 MR. ALPERSTEIN: Yeah, we have. But I don't want to  
3 be in a position that -- where you are using predictive coding  
4 because they have not followed through with their obligation to  
5 produce documents the way they have should have been doing from  
6 the beginning of this case.

7 The real problem here is because we don't understand  
8 and they can't tell us a timeline of when they will go ahead  
9 and have documents completed, we are really unsure about  
10 whether --

11 THE COURT: Well, based on your current schedule.

12 MR. ALPERSTEIN: Yes.

13 THE COURT: Let's assume you are not going to do  
14 predictive coding.

15 What is your estimate for when we will be done with  
16 the review, based on the manual review of every single  
17 document? And just produce the five percent, or whatever it  
18 is.

19 But we won't come back and do anything more. I mean,  
20 you get what you get.

21 MR. LEIB: We can't possibly know, your Honor, because  
22 we don't know the have (inaudible).

23 Right now --

24 THE COURT: Well, you have the documents you have  
25 collected.

1 MR. LEIB: Oh, among the documents we have collected?

2 MS. COLEMAN: It would be about 4,000 attorney days,  
3 in other words, you know, to prepare a team to review their own  
4 documents.

5 They have already invested over 10,000 hours in the  
6 real documents.

7 It took over 10,000 hours to review the documents to  
8 date. And, so, that would be the anticipated timeline if we  
9 did not do something.

10 And --

11 THE COURT: I am not sure I get that.

12 So, 4,000 attorney --

13 MS. COLEMAN: Days.

14 THE COURT: Regular days?

15 MS. COLEMAN: Yes, yes, exactly. Exactly.

16 THE COURT: All right.

17 Does that help you, counsel, to understand the  
18 timetable?

19 MR. ALPERSTEIN: Perhaps. But I guess we are just not  
20 in a position yet where we can really understand whether -- to  
21 produce -- it would be necessary, or the circumstances under  
22 which it is done.

23 It is a collaborative process.

24 THE COURT: Right.

25 MR. ALPERSTEIN: None of that has taken place yet.

1 THE COURT: Right.

2 MR. ALPERSTEIN: Certainly, it would be easy to --

3 THE COURT: I mean, you could collaborate, but if your  
4 position is, "We don't want even to talk about predictive  
5 coding," then --

6 MR. ALPERSTEIN: Yes.

7 THE COURT: -- it's a (inaudible).

8 MR. ALPERSTEIN: One of the reasons why we haven't,  
9 from our perspective -- which we have not gotten any details  
10 until this morning about it -- was because we wanted to  
11 understand where they were in the document production.

12 We have asked this repeatedly and we have never gotten  
13 a firm answer as to what percentage they have produced or  
14 reviewed for production, and never got a sense of, you know,  
15 the total number.

16 THE COURT: Do you have it now?

17 MR. ALPERSTEIN: Well, there is four -- well, there is  
18 four -- custodians that they said they haven't yet collected  
19 from in that 1.15 number.

20 THE COURT: Are we done? What is left to do with  
21 custodians?

22 MR. LEIB: Well, as far as identifying just --

23 THE COURT: I mean, you said you are just waiting on  
24 your information. So, we are not done with custodians yet.

25 MR. ALPERSTEIN: I think we have 23 right now. They

1 said they have collected from 19.

2 THE COURT: Okay.

3 MR. GUGLIELMO: I think there might be some others,  
4 but we can go forward right now because we need to go ahead and  
5 just work with that on our discovery.

6 THE COURT: So, we can say we are done with  
7 custodians. You have 23.

8 I mean, first, we are talking about custodians. You  
9 know, you want to move ahead. But we are --

10 MR. ALPERSTEIN: Your Honor, unless something comes up  
11 in discovery.

12 THE COURT: Right.

13 MR. ALPERSTEIN: That is the only reason why we would  
14 ever come back.

15 MR. GUGLIELMO: Right.

16 THE COURT: But if you -- if that comes up, then you  
17 can talk about it.

18 It may be it may be something that is not necessary.  
19 It should have been done before, you know.

20 There have got to be limits, too.

21 MR. ALPERSTEIN: Yes.

22 And I --

23 THE COURT: They don't have to chase every single  
24 person.

25 MR. GUGLIELMO: Right, your Honor.

1           MR. ALPERSTEIN: So, it would be -- and I guess we,  
2 obviously, would have to engage in this process, to figure out  
3 exactly what we have in a predictive coding scenario; but, even  
4 under that process, we are not sure what the timeline would be.

5           And just looking at the deadlines of what is coming  
6 up, you know, if they are only able to, you know, finish their  
7 production in a few months from now, well, we have a class cert  
8 deadline of July. We have a fact discovery deadline of August.

9           We noticed the 30(b)(6) --

10          THE COURT: Well, the deadlines can be moved --

11          MR. ALPERSTEIN: Yes.

12          THE COURT: -- but my job is going to be to make sure  
13 things get moving. So, I am going to have regular updates,  
14 whether by phone, joint status reports, or have you in.

15          Don't worry about that.

16          MR. ALPERSTEIN: Okay.

17          THE COURT: But I think at this juncture, for the next  
18 steps, so we are -- you are done. You don't need to talk more  
19 about custodians.

20          MR. LEIB: Great.

21          THE COURT: Okay.

22          MR. LEIB: That is very helpful, your Honor, and it  
23 will allow us for sure to, you know, advance the date on which  
24 we will be able to tell them when we will be able to be  
25 substantially complete.

1 THE COURT: Right.

2 MR. LEIB: We can't say, but it will advance that date  
3 by which we will be able to tell them.

4 THE COURT: And I have got to have a date by which you  
5 will tell them, but are you going to -- I would like you to  
6 talk about predictive coding. I mean --

7 MR. ALPERSTEIN: Absolutely.

8 THE COURT: -- you definitely don't want to do it, but  
9 I think we should talk about it.

10 MR. ALPERSTEIN: I don't have a, you know, a hundred  
11 percent against it.

12 THE COURT: Right.

13 MR. ALPERSTEIN: We just need to understand more about  
14 it. The first information we got was this morning.

15 But we are happy, obviously, if that makes, you know,  
16 sense here.

17 THE COURT: Okay.

18 MR. ALPERSTEIN: And I am pleased to hear that the  
19 Court would consider potentially moving other deadlines  
20 depending on, you know, the progress.

21 THE COURT: I mean, I can't move Judge Lee's discovery  
22 --

23 MR. ALPERSTEIN: Right.

24 THE COURT: -- deadlines; but, discovery deadlines, I  
25 am sure, can be moved.

1           MR. ALPERSTEIN: I think really what the -- you know,  
2 what we both want is kind of just some clarity on timeline, on  
3 both sides, so we can both, you know, finish up the discovery  
4 that, you know, that we want to do.

5           For example --

6           THE COURT: So, the timing of their production will  
7 depend on the process.

8           MR. ALPERSTEIN: Yes.

9           THE COURT: If it turns out you can't agree on  
10 predictive coding --

11          MR. ALPERSTEIN: I understand that.

12          THE COURT: -- you know, then I don't think I am going  
13 to order it.

14          It may be that I am going to hear from you and you  
15 might be saying, "Well, then, if we are getting a five percent  
16 responsive rate, you know, it doesn't make sense to keep doing  
17 something. It should be tweaked."

18          But, obviously, you are going to confer with them --

19          MR. ALPERSTEIN: Yes.

20          MS. COLEMAN: Yes.

21          THE COURT: -- first, instead of just going on and,  
22 you know, investing all of this time for a five percent  
23 responsive rate.

24          And I don't know, on the five percent response rate,  
25 how important those documents are that you are getting.



1           If they are great and they are very important; if they  
2 are responsive, but they are not, you know, all that fantastic  
3 for the case, that makes a difference, too.

4           So, I don't know so far what you are getting, if it  
5 is, you know, very helpful or not.

6           You might be -- I have heard parties come in here and  
7 say, "They have given us a bunch of stuff. It's useless."

8           MR. ALPERSTEIN: Right.

9           THE COURT: So, what is the point?

10          MR. ALPERSTEIN: Some of them might be useless. Some  
11 stuff is good.

12          One of the issues is, like, for example, we have these  
13 PBM subpoenas that we want -- I think we all want -- to go  
14 ahead and schedule depositions.

15          We have certain documents from Walgreens'  
16 communications and contracts with those PBMs. But we are not  
17 sure, you know, what percentage is complete as to that  
18 production.

19          So, while there is some useful stuff, maybe only ten  
20 percent of the useful stuff has been produced. So, that is  
21 something that, I guess, with this whole process, if we --  
22 after we meet and confer, can speed that up. Because we  
23 certainly don't --

24          THE COURT: And you can also tell them, as to the  
25 extent it can be done, "We want you to prioritize -- "

1 MR. ALPERSTEIN: And that is something --

2 THE COURT: " -- this part of discovery."

3 MR. ALPERSTEIN: That is something that I have been  
4 doing. It is just that we don't know whether they were at ten  
5 percent, 20 percent, 80 percent.

6 THE COURT: Right.

7 MR. ALPERSTEIN: Certainly, we don't need every single  
8 document.

9 But, I think, once we can work this production issue  
10 out and get to a point where we can have a substantial date for  
11 completion, then we can see when we can take, you know, the  
12 rest of our 30(b)(6) depositions and schedule 30(b)(1)s and do  
13 the third-parties ones.

14 And, then, we could -- the case can proceed. We are  
15 just at that point right now where we can't --

16 THE COURT: So, I would like to set a date for a joint  
17 status report, so you will have time to confer and, then, file  
18 the joint status report.

19 What is your suggestion? I know it's the holidays.

20 So, I will let you tell me.

21 If you need time for you to talk with each other and,  
22 then, get me the joint status report.

23 I am fine with your agreements, disagreements.

24 MS. COLEMAN: Early February maybe or maybe the end of  
25 January?

1 MR. ALPERSTEIN: The only problem that --

2 MR. GUGLIELMO: Yes.

3 MR. ALPERSTEIN: So, we have a deadline right now of  
4 the 28th of February for -- to amend the pleadings. I think  
5 that would be something that we would raise with -- you know,  
6 the Court may agree to extend that, given the parties'  
7 continued meet and confers on this issue.

8 I guess an earlier January would be -- would be --  
9 better.

10 MS. COLEMAN: What about --

11 MR. LEIB: Well, your Honor, why don't we suggest,  
12 like, January 18th?

13 MS. COLEMAN: 18th.

14 MR. GUGLIELMO: Two weeks from today.

15 THE COURT: Okay.

16 So, January 18th, you file a joint status report.

17 So --

18 MR. ALPERSTEIN: That makes sense.

19 MR. GUGLIELMO: Yeah.

20 THE COURT: All right.

21 And that will be, that you will have, hopefully,  
22 confirmed dates for the individual plaintiffs.

23 You will let me know if you have got an agreement on a  
24 protocol or, you know, ESI, or for predictive coding or some  
25 other process or if you have disagreements about that.

1 MR. ALPERSTEIN: Just one clarification, your Honor?

2 THE COURT: Yes.

3 MR. ALPERSTEIN: We discussed before the hearing --  
4 and, obviously, we will discuss this after the hearing -- we  
5 can get dates for the individual plaintiffs.

6 If they want dates for corporate designees of the  
7 third-party payors, we need a 30(b)(6) notice. And, then, we  
8 can meet and confer on that.

9 We haven't received such notice. So, we are willing  
10 to work with them on that, as well, but we just need to know  
11 the topics. But we will --

12 THE COURT: I think the sooner you get your 30(b)(6)s  
13 noticed, the better.

14 MR. LEIB: Yeah, we will get that out.

15 THE COURT: Okay.

16 MR. LEIB: But we will get the response. We will get  
17 it out now. And if we need to amend it, we will amend it.

18 THE COURT: Okay.

19 And in every status report, I think, we will have  
20 updates on whatever discovery is going.

21 You might be modifying your process right now; but, I  
22 think even while you are having these discussions, you are  
23 going to keep reviewing documents, right?

24 MS. COLEMAN: Yes.

25 MR. ALPERSTEIN: Okay.

1           THE COURT:   So, you will provide an update on  
2 progress?

3           MS. COLEMAN:   Absolutely.

4           And, your Honor, we have been prioritizing, so that  
5 the documents that Mr. Alperstein mentioned are the ones that  
6 we are getting out. And we will continue to do so.

7           THE COURT:   Okay.

8           MS. COLEMAN:   Relating to the amendment to pleading,  
9 that is correct.

10          MR. ALPERSTEIN:   And in the status report, the parties  
11 could raise any other discovery issue --

12          THE COURT:   Yes.

13          MR. ALPERSTEIN:   -- that might be -- need to be  
14 raised?

15          THE COURT:   Yes.

16          I mean, and I will set a hearing after that, because  
17 there may be disputes and, then, you will be in.

18          I never want anybody to just come in and raise  
19 something for the first time.

20          MR. ALPERSTEIN:   Yes.

21          THE COURT:   And, you know, not the day before, either.

22          So, by having a status report, you know, a couple of  
23 days -- two, three days -- before the hearing, then everybody  
24 will know what the issues are going to be.

25          So, if you file that on the 18th, then I will have you

1 back -- unless you don't need it. And you can tell me that in  
2 the joint status report.

3 (Brief pause.)

4 THE COURT: So, Monday the court is closed -- Monday,  
5 the 21st, the court is closed. It is Martin Luther King.

6 You could come in on the 22nd or the 23rd.

7 MR. LEIB: Your Honor, I want to make sure. Just a  
8 second.

9 (Brief pause.)

10 MR. LEIB: That is okay for me.

11 MR. GUGLIELMO: Is the Court available on the 23rd, by  
12 any chance?

13 MR. ALPERSTEIN: I think we could make the 22nd  
14 work --

15 THE COURT: I don't know.

16 MR. ALPERSTEIN: -- but the 23rd would be easier.  
17 Would that work?

18 MR. GUGLIELMO: Yes, that is fine.

19 THE COURT: Yes, maybe I will move -- I have to be --  
20 I have a hard stop at 11:45, but we can -- let's say 10:45.

21 MR. GUGLIELMO: That is fine.

22 THE COURT: Okay?

23 MR. ALPERSTEIN: On the 23rd?

24 THE COURT: On the 23rd, right.

25 MR. GUGLIELMO: Perfect.

1 MR. ALPERSTEIN: Thank you.

2 THE COURT: All right. What should I read, that will  
3 be helpful? I mean, I will read the Judge's -- Judge Lee's --  
4 opinion.

5 I will look at some of the transcripts.

6 You have an ESI protocol. I don't know if I need to  
7 read that at this juncture or not. It is agreed. And I guess  
8 that is going to be the protocol that discusses the search term  
9 process and --

10 MR. ALPERSTEIN: That will probably be whatever we do  
11 end up agreeing with, which I guess would be a supplement to  
12 their ESI protocol.

13 THE COURT: All right.

14 If you end up having an agreement, you can, you know,  
15 submit a proposed order --

16 MR. ALPERSTEIN: Okay.

17 THE COURT: -- whatever you want to call it. And I  
18 can just enter that even in advance of the status hearing.

19 MR. GUGLIELMO: Otherwise, there has not really been  
20 many transcripts yet. Their motion to dismiss is pending, just  
21 to give you the context of the case.

22 THE COURT: Uh-huh.

23 MR. ALPERSTEIN: Otherwise, there have been a couple  
24 just brief, you know, status hearings that really, you know,  
25 don't provide anything more than what you have just gotten from

1 us today.

2 THE COURT: If there are any other interim orders,  
3 even the expert discovery dates, if you want me to enter those,  
4 why don't you just put those in the joint status report?

5 MR. ALPERSTEIN: Okay.

6 THE COURT: You know, those dates may change if the  
7 discovery deadlines change; but, was the plan to do expert  
8 disclosures before you file dispositive motions?

9 (No response.)

10 THE COURT: I mean, you need experts for -- or nobody  
11 has thought that far ahead maybe?

12 (No response.)

13 THE COURT: All right.

14 If you don't want me to set those dates now, that is  
15 fine. We will do it later.

16 MS. COLEMAN: We can do that later.

17 MR. ALPERSTEIN: We can have -- yes, the way Judge Lee  
18 just had a couple dates --

19 THE COURT: All right.

20 MR. ALPERSTEIN: -- but I think we initially proposed  
21 a full schedule, so we can go ahead and do that.

22 THE COURT: All right.

23 MR. ALPERSTEIN: It makes sense.

24 THE COURT: So, talk about it. And if you want those,  
25 put it in the joint status report and I can enter that.



1 I would like to have -- I mean, you have got a long  
2 schedule here, but I don't want to get motions to compel late,  
3 like, you know, thirty days before the close of discovery.

4 MR. ALPERSTEIN: Right.

5 THE COURT: So, ultimately, I am going to want a  
6 deadline by which any motions to compel have been given to me.  
7 And, so, you might want to talk about that.

8 You can even time it, you know, so many days before  
9 the close of discovery, or whatever it is, so everybody knows  
10 that there will not be any surprises right before the discovery  
11 closes.

12 Is there anything else that anybody wants to raise?

13 (No response.)

14 THE COURT: Okay.

15 So, I will see you on the 23rd. Have a good holiday.

16 MR. ALPERSTEIN: Thank you, your Honor.

17 MR. GUGLIELMO: Thank you, your Honor.

18 MR. LEIB: Have a good holiday yourself.

19 MS. COLEMAN: Thank you, your Honor.

20 \* \* \* \* \*

21 I certify that the foregoing is a correct transcript from the  
22 digital recording of proceedings in the above-entitled matter,  
23 to the best of my ability, given the limitations of using a  
digital-recording system.

24 /s/ Joene Hanhardt  
25 Transcriber

January 8, 2019